IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 509 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABAR RANCHHOD KARSAN

Versus

BABAR DHIRAJLAL NARANBHAI

Appearance:

MR PN BAVISHI for Petitioners

MR YOGESH S LAKHANI for Respondent No. 1

MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of the Code of Criminal procedure at the instance of the five accused in Criminal Case No.1533/98, pending in the court of learned JMFC, Veraval, on the basis of a complaint filed by the present

respondent no.1.

2. The centre of the entire scenario which led to filing of two different complaints is a married lady named Narmada. Narmada is the sister of the present complainant-respondent no.1.

3. It appears that the present applicant no.1 (original accused no.1) was formerly married to Lalita, who was the sister of Narmada as also the present complainant-respondent no.1. When Lalita died, the family members thought it best that the present accused no.1 should marry Narmada and this marriage was accordingly arranged by the family. Out of this union three daughters were born. However, it is alleged that the family members of Narmada's husband i.e. the present five accused continued to taunt Narmada for being the mother of only daughters, and for being unable to bear a son. Be that as it may, it is alleged that this situation caused such mental anguish to Narmada that she took hold of her three daughters and jumped into a well to end all their lives. However, as fate would have it, Narmada and one of her daughters survived while two daughters drowned.

4. This incident led the present respondent no.1 as complainant to file a criminal case against the husband of Narmada and his family members, viz. five accused, wherein it is alleged that they had committed offence under section 498-A read with section 114 of IPC. This led to criminal case no.1533/98, which is pending.

5. Thereafter the complainant filed an application in the said case at Exh.3 for adding the offence under section 306 of IPC to the chargesheet. The learned Magistrate, after hearing the parties and after consideration of the material on record, was pleased to allow the application, permitting the addition of charge under section 306 of IPC. It is this order which is the subject matter of the present revision application at the instance of the original accused.

6. It appears from a reading of the impugned order that the learned Magistrate was much influenced by the postcard written by Narmada, which reflects her mental anguish and her perception of her in-law's family and consequently her decision to commit suicide. Be that as it may, what the learned Magistrate obviously overlooked was that although Narmada attempted to commit suicide, she was rescued and that therefore it could not be said that Narmada had committed suicide. If Narmada had not

committed suicide, there can be no question of any person abetting her in commission of suicide. It is as clear as day light that section 306 of IPC contemplates abetment of suicide and not an abetment of an attempt to commit suicide.

7. Learned Magistrate clearly lost sight of the above facts. The fact that Narmada had survived, and therefore had not committed suicide is apparent from the complainant's application Exh.3 itself. In para 9 of the said application Exh.3 (in the unnumbered sub-paragraph thereof) it is specifically mentioned that Narmada was fed up with the treatment meted out to her by her in-laws and that she had jumped into the well with her three daughters with a view to commit suicide, and it is merely a matter of destiny that Narmada and one daughter survived, whereas two daughters died. If the learned Magistrate had applied his mind to the facts of the case as averred in the application itself, he could not have failed to realise that there can be no abetment of suicide unless there is first a suicide.

8. Thus, on the facts and circumstances of the case the impugned order is clearly illegal and deserves to be quashed and set aside. It is accordingly so directed. This revision is, therefore, allowed and rule is made absolute accordingly.

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